

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

AUG 17 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

DOCKET FILE COPY ORIGINAL

Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Thorndale, Texas)

)  
)  
) MM Docket No. 99-243  
) RM-9675  
)  
)

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Houston Christian Broadcasters, Inc., (hereafter "HCBI") by its undersigned counsel, hereby respectfully submits this opposition to the "Petition For Reconsideration" (hereafter the "Petition") filed on or about August 2, 1999 by Mr. Roy Henderson d/b/a Cameron Broadcasting Company (hereafter "Henderson") in the above-captioned proceeding. For the reasons noted herein, the Henderson Petition should be summarily denied.

No. of Copies rec'd  
List ABCDE

018

## I. BACKGROUND

1. HCBI is an applicant for the unused FM channel 257A allotment at Thorndale, Texas. See, FCC file BPED-970911MA.<sup>1</sup> The HCBI application for Thorndale is mutually-exclusive under the Commission's rules and policies with five other applications. HCBI is the only applicant proposing to use the Thorndale FM allotment on a noncommercial, educational basis, and in accordance with the Commission's rules governing such stations.

2. On November 30, 1998, HCBI submitted a "PETITION FOR RULE MAKING" in this proceeding proposing the allocation of FM channel 286A to Thorndale, Texas, and seeking the reservation of that channel for noncommercial, educational use. HCBI also requested that the Commission amend HCBI's pending application for Thorndale to specify the use of the proposed FM channel \*286 allocation.

3. Henderson subsequently filed an application on December 2, 1998 for a "one step" upgrade in connection with a construction permit for KHTZ(FM), Cameron, Texas. This application was filed after the submission of the HCBI rule making petition. The KHTZ application conflicts with the HCBI rule making for Thorndale. Accordingly, the Henderson application for KHTZ should have been "held in abeyance" by the Bureau until the Thorndale rule making proceeding is

---

<sup>1</sup> The other applicants are Centex Broadcasting Company, LTD., Charles R. Crawford, Double K Broadcasting, Elgin FM Limited Partnership and Roy E. Henderson d/b/a Jackson Lake Broadcasting Company. The latter is the same individual who is the permittee of the Cameron, Texas FM station for which the subject application was filed with the Commission.

"resolved."<sup>2</sup> However, the Bureau erroneously processed and approved the Henderson application in advance of the release of a notice of proposed rule making on the Thorndale proposal by HCBI. As noted in the "Petition For Reconsideration" filed by HCBI on April 16, 1999, in connection with the KHTZ application, this action violates well-established Commission policy, and the Bureau has been asked to rescind the approval of the Henderson application, and return it to "pending" status subject to a final resolution of the HCBI rule making herein.

## **II. THE COMMISSION ACTED PROPERLY IN ISSUING THE NOTICE OF PROPOSED RULE MAKING IN THIS PROCEEDING.**

4. Since the Bureau's action on the KHTZ application was clearly erroneous, it is no bar to the institution of the subject rule making proceeding. The Commission's action in releasing the *NOTICE OF PROPOSED RULE MAKING*<sup>3</sup> in this proceeding was wholly correct in that it is clear the earlier action by the Bureau in acting on the KHTZ application violates established policy, and was in all likelihood the result of an inadvertent processing error.

---

<sup>2</sup> In 1993, the Commission released its *Report and Order in Amendment of the Commission's Rules to Permit FM Channel and Class Modifications by Application*. The *Report* specifically addressed the method by which the Commission would process conflicts between applications filed pursuant to the "one-step" procedures adopted in that proceeding and earlier or simultaneously filed allotment petitions. The Commission adopted the following procedure for handling such cases:

Generally, applications that conflict with earlier or simultaneously filed rule making petitions will be held in abeyance, and will not be granted unless the conflict is resolved. Unless the applicant amends its application so as to remove the conflict, the conflict will be resolved in the context of the rule making proceeding. FCC 93-299, page 5, para. 18 (1993).

<sup>3</sup> DA 99-1292, released July 2, 1999.

5. Should Henderson feel that the proposed allotment of FM channel \*286A to Thorndale violates his rights, he is free to file comments in the proceeding in that regard. However, his erroneous belief that the KHTZ application should be given preference over the HCBI rule making proposal herein is totally at odds with Commission legal precedent, policy and its rules and regulations.

**III. THE HCBI RULE MAKING PETITION DEMONSTRATES THAT THERE ARE NO NONCOMMERCIAL FM CHANNELS AVAILABLE FOR USE AT THORNDALE, TEXAS.**

6. Henderson argues that the Commission erred in proposing the noncommercial, educational reservation of the FM channel 286A allotment at Thorndale. Henderson attempts to show that noncommercial FM channel 211A can be utilized in the Thorndale area with a limited power of 300 watts. However, Henderson's engineering support for this proposition is as erroneous as his arguments in support of the KHTZ application.

7. As shown definitively in the "Engineering Statement" of Lechman & Johnson, Inc. appended to the HCBI Petition For Rule Making, the use of noncommercial FM channel 211A is precluded by the construction permit for KBDE(FM), Gatesville, Texas<sup>4</sup>, by an application to modify the facilities of KBDE(FM)<sup>5</sup>, by applications for new stations at Bryan<sup>6</sup> and College Station<sup>7</sup>, Texas, and by an application to modify the facilities of KPFT(FM), Houston,

---

<sup>4</sup> BPED-970317MA.

<sup>5</sup> BMPED-980501MB.

<sup>6</sup> BPED-970912MA.

Texas<sup>8</sup>. In addition, the of community of Thorndale, Texas lies wholly within the protected Grade A contour (68 dBu) of TV channel 6 station KCEN-TV, Temple, Texas, and the use of FM channel 211 at Thorndale is prohibited under the provisions of Section 73.525 of the Commission's rules. Simply stated, as shown by HCBI in its Petition For Rule Making there are no noncommercial FM channels available for use at Thorndale due to the proximity of KCEN-TV.

Based on the foregoing, it is clear that Henderson's Petition fails to lay either a factual or legal predicate for the Commission's reconsideration of its action in commencing the Thorndale rule making proceeding. Accordingly, the Henderson Petition should be summarily dismissed.

Respectfully submitted,

Houston Christian Broadcasters, Inc.

By: 

Jeffrey D. Southmayd

Its Attorney

Southmayd & Miller  
1220 Nineteenth Street, N.W.  
Suite 400  
Washington, D.C. 20036  
(202) 331-4100

Date: August 17, 1999

---

<sup>7</sup> BPED-970828MA.

<sup>8</sup> BPED-970527IE.

## CERTIFICATE OF SERVICE

I, Jeffrey D. Southmayd, do hereby certify that I have caused a copy of the foregoing to be served by first class United States mail, postage pre-paid, on the following on this 17th day of August, 1999.

Robert L. Thompson, Esquire  
Taylor, Thiemann & Aitken, L.C.  
908 King Street, Suite 300  
Alexandria, Virginia 22314  
Counsel to Charles E. Crawford

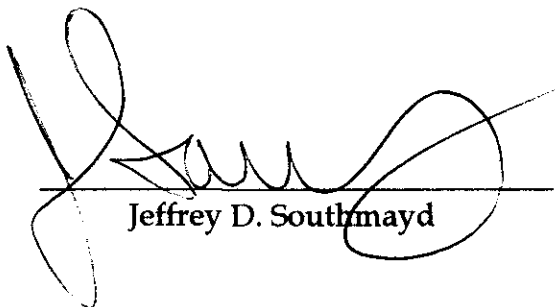
Lee J. Peltzman, Esquire  
Shainis & Peltzman, Chtd.  
Suite 290  
1901 L Street, N.W.  
Washington, D.C. 20036  
Counsel to Double K Broadcasting

Henry E. Crawford, Esquire  
Suite 900  
1150 Connecticut Avenue, N.W.  
Washington, D.C. 20036-4192  
Counsel to Roy Henderson  
d/b/a Jackson Lake Broadcasting, Co.  
and Cameron Broadcasting Company

Robert J. Buenzle, Esquire  
12110 Sunset Hills Road  
Suite 450  
Reston, Virginia 22090  
Counsel to Centex Broadcasting Co.

Ms. Ann C. Farhat  
Bechtel & Cole, Chtd.  
Suite 250  
1901 L Street, N.W.  
Washington, D.C. 20036  
Counsel to Elgin FM LP

John A. Karousos  
Chief, Allocations Branch  
Policy & Rules Division  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
TW-A325  
Washington, D.C. 20554



Jeffrey D. Southmayd